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IN THE SEVENTH DISTRICT COURT IN AND FOR EMERY COUNTY

STATE OF UTAH

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CO-OP MINING COMPANY,	:	
	:	
Petitioner/Respondent,	:	MEMORANDUM IN SUPPORT
	:	OF MOTION TO QUASH
-vs-	:	AND FOR DISSOLUTION
	:	OF STAY PENDING APPEAL
DIVISION OF OIL, GAS and	:	
MINING,	:	
	:	Civil No. 4534
Respondent.	:	

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The Division of Oil, Gas and Mining ("Division"),  
hereby submits this Memorandum in Support of its Motion to  
Quash and for Dissolution of the Stay Pending Appeal.

INTRODUCTION

On August 2, 1984, the Division received a Petition for  
Review, a Motion for Ex Parte Order and an Order from this  
Court granting an injunction against enforcement of a cer-  
tain Order issued by the Board of Oil, Gas and Mining  
("Board"). These documents were hand delivered to Marjorie

tions of Chapter 6 of Title 40, Utah Code Annotated. Section 40-6-4, Utah Code Annotated creates the Board as the "policy making body for the division of oil, gas and mining." Pursuant to that function, the Board makes rules and thereby formulates general policy which the Division then follows in its day to day regulatory duties.

The Board has also been designated as the quasi-judicial administrative body to hear, on the record, disputes arising between the Division and those regulated or between the regulated entities themselves. When functioning in an adjudicative manner, the Board and Division are clearly separate bodies with the Division designated as a party before an impartial but technically expert board of decision-makers. The conduct of both the Board and the parties appearing before it is governed by comprehensive procedural rules adopted by the Board. The Board hears testimony and takes evidence for the ultimate purpose of issuing a final order based upon the record as submitted.

The Division exists pursuant to the authority of Section 40-6-15, Utah Code Annotated. The Division is the implementing body for the Board with certain other duties separately assigned to it by statute and regulation. The Division has no authority to conduct formal adjudicatory hearings. Any action taken by the Division is appealable to

the Board whereas an action taken by the Board in the form of a final order may be reviewed by a district court in accordance with the statutory requirements for obtaining such review.

I

THIS COURT HAS NO APPELLATE JURISDICTION TO REVIEW DECISIONS OF AN ADMINISTRATIVE AGENCY AND NO INPERSONAM ORIGINAL JURISDICTION SINCE NO CIVIL ACTION HAS BEEN COMMENCED.

Article VIII, §7 of the Utah Constitution provides that "(t)he District Court shall have original jurisdiction in all matters civil and criminal ... (and) appellate jurisdiction from all inferior courts and tribunals. ..."

Section 40-6-12(1), Utah Code Annotated requires that, to obtain judicial review, a civil action be commenced against the Board in the district court.

This section provides, in pertinent part:

(a)ny person adversely affected by any rule or order made or issued under this act, may within 90 days after entry bring a civil suit in the district court of Salt Lake County or in the district court of the county in which the complaining party resides ... to test the validity of any provision of this act, or rule or order, or to secure an injunction or to obtain other appropriate relief, including all rights of appeal.

Plaintiff has failed to bring a civil action against the Board before this Court since Plaintiff has failed to comply with Rule 4 of the Utah Rules of Civil Procedure in

that no summons has been issued or served upon the named Respondent, the Division, nor upon the Board.

The law in Utah is clear on this matter. In Utah Sand & Gravel Products Corp. v. Tolbert, 402 P.2d 703 (Utah, 1965), the Court set aside a default judgment on the basis that the summons indicated the action had been brought in the city court rather than the district court as had been indicated on the complaint. Plaintiff subsequently obtained an ex parte Order amending the summons and the Defendant was so notified by letter.

Justice Crockett, in his opinion, acknowledged that the Rules of Civil Procedure were "intended to eliminate undue emphasis on technicalities" but he noted that "this does not mean that the procedure before the courts has become entirely without form and void." (p. 704) He went on to say that:

[t]he proper issuance and service of a summons which is the means of invoking the jurisdiction of the court and of acquiring jurisdiction over the defendant, is the foundation of a lawsuit. (p. 704)

The Utah Court followed Utah Sand & Gravel in deciding Murdock v. Blake, 484 P.2d 164 (Utah, 1981). In that case, the Plaintiff had failed to serve the proper agent for the defendant corporation. The Court stated that:

[s]ervice of summons in conformance with the mode

prescribed by statute is deemed jurisdictional, for it is service of process, not actual knowledge of the commencement of the action which confers jurisdiction.

Since Section 40-6-12(1), Utah Code Annotated, requires that a civil action be brought to obtain judicial review of a Board Order and no summons has been issued or served in this matter, this Court has neither appellate nor original jurisdiction to hear this matter. The Division is, therefore, entitled to an Order Quashing Service.

## II

THIS COURT, HAVING NO APPELLATE JURISDICTION, HAS NO AUTHORITY TO ISSUE A STAY PENDING APPEAL.

Rule 62 of the Utah Rules of Civil Procedure is entitled "Stay of Proceedings to Enforce a Judgment." Clearly, this rule applies where jurisdiction lies within the judicial system and a final judgment has been rendered by a judicial tribunal. As has been discussed above, no judicial body has obtained jurisdiction over the named Respondent nor over the agency issuing the Order complained of.

In fact, if an action had been brought against the Board, Rule 65A, U.R.C.P. would be the applicable rule for obtaining an injunction against the enforcement of the Board Order. Rule 65A(a) provides that "(n)o preliminary injunction shall be issued without notice to the adverse party." Furthermore, Rule 65A(b) requires that an Ex Parte

temporary restraining order "... shall expire by its terms within such time after entry, not to exceed ten days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period. ..."

Since this Court has no jurisdiction over the Division nor over the Board, the agency issuing the Order, the Division is entitled to an Order Dissolving the Stay Pending Appeal.

#### SUMMARY

In summary, then, Plaintiff has failed to comply with the statutory requirements necessary to obtain review of the administrative order issued by the Board of Oil, Gas and Mining.

First, no summons has been served to initiate judicial jurisdiction over the named Respondent. Second, no civil action has been brought against the Board to obtain review of the Order complained of. Finally, Rule 65A U.R.C.P. was not adhered to with respect to notice and hearing and the time limits placed upon ex parte stays.

Based upon the foregoing, the Division respectfully re-

quests this Court to issue an Order Quashing Service and for  
Dissolution of the Stay Pending Appeal.

DATED this 9<sup>th</sup> day of August, 1984.

DAVID L. WILKINSON  
Attorney General

Barbara W. Roberts  
BARBARA W. ROBERTS  
Assistant Attorney General  
Attorneys for Respondent

MAILING CERTIFICATE

This is to certify that a copy of the foregoing Memorandum in Support of Motion to Quash and For Dissolution of Stay Pending Appeal was mailed, postage prepaid, to Kenneth L. Rothey, 942 East 7145 South, #108, Salt Lake City, Utah 84047 and Carl E. Kingston, P. O. Box 15809, Salt Lake City, Utah 84115, this 9<sup>th</sup> day of August, 1984.

Marjorie L. Larson